

**Assembly Bill No. 1217**

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Passed the Assembly September 12, 2013

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*Chief Clerk of the Assembly*

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Passed the Senate September 12, 2013

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to add Chapter 13 (commencing with Section 1796.10) to Division 2 of the Health and Safety Code, relating to public health.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1217, Lowenthal. Home Care Services Consumer Protection Act.

Existing law provides for the In-Home Supportive Services (IHSS) program, a county-administered program under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. The IHSS program includes various eligibility requirements for individuals who provide services to recipients under the program. Under existing law, a private provider of in-home care services is not subject to the requirements of the IHSS program.

Existing law provides for the licensing and regulation of various community care facilities by the State Department of Social Services.

This bill would enact the Home Care Services Consumer Protection Act, which would provide, on and after January 1, 2015, for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services, and the registration of home care aides. The bill would exclude specified entities from the definition of a home care organization and would not include certain types of individuals as home care aides for the purposes of these provisions.

This bill would require the department to establish and continuously update a home care aide registry, which would include specified information relating to home care aide applicants and registered home care aides. This bill would require background clearances for home care aides, as prescribed, and would set forth specific duties of the home care organization, the department, and the Department of Justice in this regard. The bill would require a home care aide applicant to submit to the Department of Justice a signed declaration under penalty of perjury regarding any prior

criminal convictions. The bill would require home care aides to demonstrate they are free of active tuberculosis.

The bill would require the department to impose various fees to be deposited in the Home Care Fund to be created by this bill. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act by a home care organization or a home care aide. The bill would require any fines and penalties collected under these provisions to be deposited into the Home Care Penalties Subaccount within the Home Care Fund to be created by this bill.

This bill would provide that is a misdemeanor for a person to falsely represent or present himself or herself as a home care aide applicant or registered home care aide. The bill would also provide that any person who violates these provisions or willfully or repeatedly violates a rule or regulation promulgated under these provisions is guilty of a misdemeanor. Because this bill creates new crimes, this bill imposes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 13 (commencing with Section 1796.10) is added to Division 2 of the Health and Safety Code, to read:

#### CHAPTER 13. HOME CARE SERVICES

##### Article 1. General Provisions

1796.10 This chapter shall be known, and may be cited, as the Home Care Services Consumer Protection Act.

1796.11. The State Department of Social Services shall administer and enforce this chapter.

1796.12. For purposes of this chapter, the following definitions shall apply:

(a) “Affiliated home care aide” means an individual, 18 years of age or older, who is employed by a home care organization to provide home care services to a client and is listed on the home care aide registry.

(b) “Child” or “children” means an individual or individuals under 18 years of age.

(c) “Client” means an individual who receives home care services from a registered home care aide.

(d) “Department” means the State Department of Social Services.

(e) “Director” means the Director of Social Services.

(f) “Family member” means any spouse, by marriage or otherwise, child or stepchild, by natural birth or by adoption, parent, brother, sister, half-brother, half-sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or any person denoted by the prefix “grand” or “great,” or the spouse of any of these persons, even if the marriage has been terminated by death or dissolution.

(g) “Home care aide applicant” means an individual, 18 years of age or older, who is requesting to become an registered home care aide and the department has received and is processing the individual’s complete home care aide application and fees.

(h) “Home care aide application” means the official form, designated by the department, to request to become a registered home care aide.

(i) “Home care aide registry” means a department-established and department-maintained Internet Web site of registered home care aides and home care aide applicants, which includes all of the following: the individual’s name, registration number, registration status, registration expiration date, and, if applicable, the home care organization to which the affiliated home care aide or affiliated home care aide applicant is associated.

(j) “Home care organization” means an individual, 18 years of age or older, firm, partnership, corporation, limited liability company, joint venture, association, or other entity that arranges for home care services by an affiliated home care aide to a client, and is licensed pursuant to this chapter.

(k) “Home care organization application” means the official form, designated by the department, to request to become a licensed home care organization.

(l) “Home care organization licensee” means an individual, 18 years of age or older, firm, partnership, corporation, limited liability company, joint venture, association, or other entity having the authority and responsibility for the operation of a licensed home care organization.

(m) “Home care services” means nonmedical services and assistance provided by a registered home care aide to a client who, because of advanced age or physical or mental disability, cannot perform these services. These services enable the client to remain in his or her residence and include, but are not limited to, assistance with the following: bathing, dressing, feeding, exercising, personal hygiene and grooming, transferring, ambulating, positioning, toileting and incontinence care, assisting with medication that the client self-administers, housekeeping, meal planning and preparation, laundry, transportation, correspondence, making telephone calls, shopping for personal care items or groceries, and companionship. This subdivision shall not authorize a registered home care aide to assist with medication that the client self-administers that would otherwise require administration or oversight by a licensed health care professional.

(n) “Registered home care aide” means an affiliated home care aide or independent home care aide, 18 years of age or older, who is listed on the home care aide registry.

(o) “Independent home care aide” means an individual, 18 years of age or older, who is not employed by a home care organization, but who is listed on the home care aide registry and is providing home care services through a direct agreement with a client.

## Article 2. Registry and Exemptions

1796.14. (a) Individuals who are not employed by a home care organization but who provide home care services to a client may be listed on the home care aide registry.

(b) An affiliated home care aide shall be listed on the home care aide registry prior to providing home care services to a client.

(c) An individual providing home care services to a child is exempt from any requirement to be listed on the home care aide registry if the individual is one of the following:

- (1) A family member of the child.
- (2) A guardian of the child.

(3) A conservator of the child.

(4) A foster parent of the child, in a foster family home, as defined in paragraph (5) of subdivision (a) of Section 1502, or a certified family home, as defined in subdivision (d) of Section 1506.

(5) Nonrelative extended family member, as defined in Section 362.7 of the Welfare and Institutions Code.

(6) Providing home care services in a facility in which only Indian children who are eligible under the federal Indian Child Welfare Act (25 U.S.C. 1901 et seq.) are placed and is one of the following:

(A) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(B) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(7) Providing home care services as part of his or her job duties through one of the following entities:

(A) A home health agency licensed under Chapter 8 (commencing with Section 1725).

(B) A hospice licensed under Chapter 8.5 (commencing with Section 1745).

(C) A health facility licensed under Chapter 2 (commencing with Section 1250).

(D) Any clinic licensed under Sections 1204 or 1204.1.

(E) A county providing in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, without regard to whether the county provides these services as a public authority or through a nonprofit consortium established pursuant to Section 12301.6 of the Welfare and Institutions Code.

(F) A home medical device retail facility licensed under Section 111656.

(G) An organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and supports for persons with

developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when funding for those services is provided through the State Department of Developmental Services and more than 50 percent of the recipients of the home care services provided by the organization are persons with developmental disabilities.

(H) A community care facility as licensed under Chapter 3 (commencing with Section 1500), a residential care facility for persons with special health care needs licensed under Chapter 3.01 (commencing with Section 1568.01), a residential care facility for the elderly licensed under Chapter 3.2 (commencing with Section 1569), or a child day care licensed under Chapter 3.4 (commencing with Section 1596.70).

(I) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.02.

(J) Any other entity providing services similar to those described in this paragraph, as determined by the director.

(8) Providing services authorized pursuant to Section 2731 of the Business and Professions Code

(d) (1) Home care aides shall not include individuals who are providing home care services as part of their job duties through one of the following entities:

(A) Services authorized to be provided by a licensed home health agency under Chapter 8 (commencing with Section 1725).

(B) Services authorized to be provided by a licensed hospice pursuant to Chapter 8.5 (commencing with Section 1745).

(C) Services authorized to be provided by a licensed health facility pursuant to Chapter 2 (commencing with Section 1250).

(D) In-home supportive services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

(E) Services authorized to be provided by one of the following:

(i) A licensed residential care facility for the elderly pursuant to Chapter 3.2 (commencing with Section 1569).

(ii) A licensed community care facility pursuant to Chapter 3 (commencing with Section 1500).

(iii) A licensed residential care facility for persons with chronic life-threatening illness pursuant to Chapter 3.01 (commencing with Section 1568.01).

(iv) A licensed facility, pursuant to the California Child Day Care Act (Chapter 3.4 (commencing with Section 1596.70)), which includes day care centers under Chapter 3.5 (commencing with Section 1596.90) and family day care homes under Chapter 3.6 (commencing with Section 1597.30).

(2) Home care aides shall not include individuals providing services authorized to be provided pursuant to Section 2731 of the Business and Professions Code.

1796.15. This chapter shall not prohibit an individual from employing an individual not listed on the home care aide registry to provide home care services. The department shall have responsibility only for the maintenance of the home care aide registry regarding registered home care aides.

1796.16. A registered home care aide may provide home care services to more than one child for a family, but may not provide home care services for a child or children from more than one family at the same time. This section shall not preclude a registered home care aide from providing home care services for a child or children of multiple families at different times. This chapter shall not override provisions of the California Child Day Care Act (Chapter 3.4 (commencing with Section 1596.70)), Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30).

1796.17. A home care organization shall not include the following:

(a) A home health agency licensed under Chapter 8 (commencing with Section 1725).

(b) A hospice licensed under Chapter 8.5 (commencing with Section 1745).

(c) A health facility licensed under Chapter 2 (commencing with Section 1250).

(d) A county providing in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, without regard to whether the county provides these services as a public authority or through a nonprofit consortium established pursuant to Section 12301.6 of the Welfare and Institutions Code.

(e) A home medical device retail facility licensed under Section 111656.



(f) An organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and supports for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when funding for those services is provided through the State Department of Developmental Services and more than 50 percent of the recipients of the home care services provided by the organization are persons with developmental disabilities.

(g) An employment agency, as defined in Section 1812.5095 of the Civil Code, that procures, offers, refers, provides, or attempts to provide an independent home care aide who provides home care services clients.

(h) A residential care facility for the elderly licensed under Chapter 3.2 (commencing with Section 1569).

(i) A community care facility licensed under Chapter 3 (commencing with Section 1500), or a residential care facility for persons with chronic life-threatening illness licensed under Chapter 3.01 (commencing with Section 1568.01).

(j) An person or organization performing activities that fall under the jurisdiction of a child day care facility licensed under Chapter 3.4 (commencing with Section 1596.70), a day care center licensed under Chapter 3.5 (commencing with Section 1596.60), or a family day care home licensed under Chapter 3.6 (commencing with Section 1597.30).

### Article 3. Home Care Aide Applicants

1796.19. (a) The department shall consider, but is not limited to, the following when determining whether to approve a registration application:

(1) Evidence satisfactory to the department of the ability of the independent home care aide applicant or the affiliated home care aide applicant to comply with this chapter and the rules and regulations promulgated under this chapter by the department.

(2) Evidence satisfactory to the department that the independent home care aide applicant or the affiliated home care aide applicant is of reputable and responsible character. The evidence shall include, but is not limited to, a review of the independent home care aide applicant's or the affiliated home care aide applicant's criminal offender record information pursuant to Section 1522.

(3) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, related to the care of individuals against the independent home care aide applicant or the affiliated home care aide applicant.

(4) A signed statement that the independent home care aide applicant or the affiliated home care aide applicant has read and understood this chapter and any rules and regulations promulgated under this chapter by the department.

(5) Any other information that may be required by the department for the proper administration and enforcement of this chapter.

(b) Failure of the home care aide applicant to cooperate with the department in the completion of the Home Care Aide application shall result in the withdrawal of the registration application. "Failure to cooperate" means that the information described in this chapter and by any rules and regulations promulgated under this chapter has not been provided, or has not been provided in the form requested by the department, or both.

#### Article 4. Registration

1796.21. A registered home care aide shall be 18 years of age or older.

1796.22. Any individual who has submitted an application and who possesses any one of the following identification cards may initiate a background examination to be a registered home care aide:

(a) A valid California driver's license.

(b) A valid identification card issued by the Department of Motor Vehicles.

(c) A valid Alien Registration Card.

(d) In the case of a person living in a state other than California, a valid numbered photo identification card issued by an agency of the state other than California.

1796.23. (a) Each person initiating a background examination to be a registered home care aide shall submit his or her fingerprints to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services, unless exempt under subdivision (d). Each person initiating a background examination to be a registered home care aide shall also submit to the State Department of Social Services a signed declaration under penalty of perjury regarding any prior criminal convictions pursuant to Section 1522 and a completed home care aide application.

(b) A law enforcement agency or other local agency authorized to take fingerprints may charge a reasonable fee to offset the costs of fingerprinting for the purposes of this chapter.

(c) The Department of Justice shall use the fingerprints to search the state and Federal Bureau of Investigation criminal offender record information pursuant to Section 1522.

(d) A person who is a current licensee or employee in a facility licensed by the State Department of Social Services, a certified foster parent, a certified administrator, or a registered TrustLine provider need not submit fingerprints to the State Department of Social Services and may transfer his or her current criminal record clearance or exemption pursuant to paragraph (1) of subdivision (h) of Section 1522. The person shall instead submit to the State Department of Social Services, along with the person's registration application, a copy of the person's identification card described in Section 1796.22 and sign a declaration verifying the person's identity.

1796.24. (a) (1) The department shall establish a home care aide registry pursuant to this chapter and shall continuously update the registry information. Upon submission of the home care aid application and fingerprints or other identification documents pursuant to Section 1796.23, the department shall enter into the home care aide registry the person's name, identification number, and an indicator that the person has submitted a home care aide application and fingerprints or identification documentation. This person shall be known as a "home care aide applicant."

(2) A person shall not be entitled to apply to be a registered home care aide and shall have his or her registration application returned without the right to appeal if the person would not be eligible to obtain a license pursuant to Section 1558.1.

(b) (1) Before approving an individual for registration, the department shall check the individual's criminal history pursuant to Section 1522. Upon completion of the searches of the state summary criminal offender record information and the records of the Federal Bureau of Investigation, the applicant shall be issued a criminal record clearance or granted a criminal record exemption if grounds do not exist for denial pursuant to Section 1522. The department shall enter that finding in the person's record in the home care aide registry and shall notify the person of the action. This person shall be known as an "independent home care aide" or an "affiliated home care aide." If the applicant meets all of the conditions for registration, except receipt of the Federal Bureau of Investigation's criminal offender record information search response, the department may issue a clearance if the applicant has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a minor traffic violation. If, after approval, the department determines that the registrant has a criminal record, registration may be revoked pursuant to Section 1796.26.

(2) For purposes of compliance with this section, the department may permit an applicant to request the transfer of a current criminal record clearance or exemption for a licensed care facility issued by the department or a county with delegated licensing authority. A signed criminal record clearance or exemption transfer request shall be submitted to the department and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance or exemption that can be transferred pursuant to the requirements of this chapter.

(3) The State Department of Social Services shall hold criminal record clearances and exemptions in its active files for a minimum of three years after the individual is no longer on the registry in order to facilitate a transfer request.

1796.25 (a) (1) If the department finds that the home care aide applicant or the registered home care aide has been convicted of a crime, other than a minor traffic violation, the department

shall deny the home care aide application, or revoke the registered home care aide's registration unless the director grants an exemption pursuant to subdivision (g) of Section 1522.

(2) If the department finds that the independent home care aide applicant, the independent home care aide, the affiliated home care aide applicant, or the affiliated home care aide has an arrest as described in subdivision (a) of Section 1522, the department may deny the registration application or registration renewal application, or revoke the registered home care aide's registration, if the independent home care aide applicant, independent home care aide, affiliated home care aide applicant, or affiliated home care aide may pose a risk to the health and safety of any person who is or may become a client and the department complies with subdivision (e) of Section 1522.

(3) The department may deny the home care aide application or the renewal application of a registered home care aide if the department discovers that it had previously revoked a license or certificate of approval to be a certified family home, a certified administrator, or a registered TrustLine provider held by the home care aide applicant or registered home care aide, or that it had excluded the home care aide applicant or registered home care aide from a licensed facility.

(4) The department may deny the home care aide application or registered home care aide registration renewal application, for placement or retention upon the home care aide registry or revoke the registered home care aide's registration if the department discovers that it had previously denied the home care aide applicant's or registered home care aide's application for a license from the department or certificate of approval to be a certified family home, a certified administrator, or a registered TrustLine provider.

(b) (1) If the department revokes or denies a home care aide application or registered home care aide's renewal application pursuant to subdivision (a), the department shall advise the home care aide applicant or registered home care aide of the right to appeal. The home care aide applicant or registered home care aide shall have 15 days to appeal the denial or revocation.

(2) Upon receipt by the department of the appeal, the appeal shall be set for hearing. The hearing shall be conducted in accordance with Section 1551.

(c) If the home care aide application or registered home care aide renewal application has been denied, the home care aide applicant or registered home care aide shall not reapply until he or she meets the timeframe set forth by the department in regulation, not to exceed one year.

1796.26. (a) (1) The department may revoke or deny a registered home care aide's registration or request for registration renewal if the registered home care aide does any of the following:

(A) Procures or attempts to procure his or her registered home care aide registration or renewal by fraud or misrepresentation.

(B) Knowingly makes or gives any false statement or information in conjunction with the registered home care aide application or renewal application.

(C) Has a criminal conviction, unless an exemption is granted pursuant to Section 1522.

(D) Engages or has engaged in an incident of abuse or neglect or other conduct that poses a threat to the health and safety of any person who is or may become a client.

(E) Violates this chapter or of the rules or regulations promulgated under this chapter.

(F) Aids, abets, or permits the violation of this chapter or of the rules and regulations promulgated under this chapter.

(G) Engages or has engaged in conduct which is inimical to the health, morals, welfare, or safety of the people of the state or an individual receiving or seeking to receive home care services.

(H) Engages or has engaged in acts of financial malfeasance concerning a client, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of client moneys and property, or willful or negligent failure to provide services.

(2) An individual whose registered home care aide registration has been revoked shall not reapply until he or she meets the timeframe as set forth in Section 1558.1.

(3) An individual whose registered home care aide criminal record exemption has been denied shall not reapply for two years from the date of the exemption denial.

(4) The hearing to revoke or deny the registered home care aide registration or registration renewal request shall be conducted in accordance with Section 1551.

(b) (1) The registered home care aide's registration shall be considered forfeited under the following conditions:

(A) The registered home care aide has had a license or certificate of approval revoked, suspended, or denied as authorized under Section 1534, 1550, 1568.082, 1569.50, or 1596.885.

(B) The registered home care aide has been denied employment, residence, or presence in a facility or client's home based on action resulting from an administrative hearing pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897.

(C) The registered home care aide fails to maintain a current mailing address with the department.

(D) The registered home care aide's registration is not renewed.

(E) The registered home care aide surrenders his or her registration to the department.

(F) The registered home care aide dies.

(2) An individual whose registered home care aide registration has been forfeited shall not reapply until he or she meets the timeframe set forth by the department in Section 1558.1.

(c) A registered home care aide's registration shall not be transferred or sold to another individual or entity.

1796.28. (a) The Department of Justice shall maintain and continually update pertinent criminal offender record information of registered home care aides and shall inform the department of subsequent reports received pursuant to Section 11105.2 of the Penal Code. The department shall continually update the home care aide registry pursuant to the actions required in this chapter.

(1) Registered home care aides and home care aide applicants shall maintain a current mailing address with the department.

(2) Registered home care aides and home care aide applicants shall inform the department of any new mailing address in writing within 10 days of a change in address.

(b) Notwithstanding any other law, including Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, state officers or employees shall not be liable for any damages caused by their conduct pursuant to this chapter except for intentional acts or gross negligence.

1796.29. The department shall do both of the following in the administration of the home care aide registry:

(a) Establish and maintain on the department's Internet Web site the registry of registered home care aides and home care aide applicants.

(1) To expedite the ability of a consumer to search and locate a registered home care aide or home care aide applicant, the Internet Web site shall enable consumers to look up the registration status by providing the registered home care aide's or home care aide applicant's name, registration number, registration status, and registration expiration date.

(2) The Internet Web site shall not provide any additional, individually identifiable information about a registered home care aide or home care aide applicant. The department may request and may maintain additional information for registered home care aides or home care aide applicants, as necessary for the administration of this chapter, which shall not be publicly available on the home care aide registry.

(b) Update the home care registry upon receiving notification from a home care organization that an affiliated home care aide is no longer employed by the home care organization.

#### Article 5. Renewal

1796.31. (a) To remain on the home care aide registry, a registered home care aide shall renew his or her registration every two years.

(1) A registered home care aide's registration shall expire every two years, on the anniversary date of the initial registration date. If the registration is not renewed on or prior to its expiration date, the registration shall be forfeited pursuant to subdivision (b) of Section 1796.26.

(2) To renew a registration, the registered home care aide shall, on or before the registration expiration date, request renewal by submitting to the department the registration renewal application form and paying the registration renewal application fee in the amount determined by the department.

(b) Renewal of a registered home care aide's registration is conditioned on compliance with all of the following:

(1) Submitting a complete registration renewal application form and payment of fees, both of which shall be postmarked on or before the expiration of the registration.



(2) Continuing to satisfy the requirements set forth in this chapter.

(3) Cooperating with the department in the completion of the renewal process. Failure of the registered home care aide to cooperate shall result in the withdrawal of the registration renewal application by the department. For purposes of this section, a failure to cooperate means that the information described in this chapter and in any rules and regulations promulgated under this chapter has not been provided, or has not been provided in the form requested by the department, or both.

(c) A revoked registered home care aide's registration is subject to expiration as provided for in this section. If reinstatement of the registered home care aide's registration is approved by the department, the individual, as a condition precedent to reinstatement, shall pay a fee in an amount equal to the renewal fee accrued at the time of its revocation.

#### Article 6. Licensure of Home Care Organizations

1796.33. Any individual who has submitted an application and who possesses any one of the following identification cards may initiate a background examination to be a licensed home care organization:

(a) A valid California driver's license.

(b) A valid identification card issued by the Department of Motor Vehicles.

(c) A valid Alien Registration Card.

(d) In the case of a person living in a state other than California, a valid numbered photo identification card issued by an agency of the state other than California.

1796.34. In order to obtain a home care organization license, the following individual or individuals shall consent to the background examination described in Section 1796.23:

(a) The owner or owners of the home care organization, if the owners are individuals.

(b) If the owner of a home care organization is a corporation, limited liability company, joint venture, association, or other entity, an individual having a 10-percent or greater interest in that entity.

1796.35. (a) A person or a private or public organization, with the exception of a county providing in-home supportive services

pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and the exceptions provided for in subdivision (b), shall not do any of the following, unless it is licensed under this chapter:

(1) Represent himself, herself or itself to be a home care organization by name, advertising, soliciting, or any other presentments to the public, or in the context of services within the scope of this chapter, imply that he, she, or it is licensed to provide those services or to make any reference to employee bonding in relation to those services.

(2) Use the terms “home care organization,” “home care,” “in-home care,” or any combination of those terms, within its name.

(b) This section does not apply to either of the following:

(1) A county providing in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) An employment agency, as defined in Section 1812.5095 of the Civil Code, that procures, offers, refers, provides, or attempts to provide an affiliated home care aide who provides home care to clients.

1796.36. (a) Subject to the exceptions set forth in Section 1796.17, an individual, partnership, corporation, limited liability company, joint venture, association, or other entity shall not arrange for the provision of home care services by a registered home care aide to a client in this state before obtaining a license pursuant to this chapter. This shall be deemed “unlicensed home care services.”

(b) Upon discovering an individual or entity is in violation of subdivision (a), the department shall send a written notice of noncompliance to the individual or entity and assess a civil penalty of nine hundred dollars (\$900) per day for each calendar day of each violation.

(c) Upon discovering that an individual or entity is in violation of subdivision (a), the department shall send a copy of the written notice of noncompliance to the individual or entity and to the Attorney General or appropriate district attorney or city attorney.

(d) Upon receiving this notice, the Attorney General, district attorney, or city attorney may do any or all of the following:

(1) Issue a cease and desist order, which shall remain in effect until the individual or entity has obtained a license pursuant to this

chapter. If the individual or entity fails to comply with the cease and desist order within 20 calendar days, the Attorney General, district attorney, or city attorney may apply for an injunction.

(2) Impose the civil penalty described in subdivision (b).

(3) Bring an action against the individual or entity under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

1796.37. (a) A home care organization that has its principal place of business in another state, in addition to the other requirements of this chapter, before arranging for home care services provided by an affiliated home care aide to a client in the state, shall comply with all of the following:

(1) Have an office in California.

(2) Maintain all pertinent records of the operation in California at the California office. All records shall be available to review, copy, audit, and inspect by the licensing agency.

(b) If the home care organization is a foreign corporation, foreign limited liability company, foreign limited partnership, foreign association, or a foreign limited liability partnership, as defined in Sections 170, 171, 171.03, 171.05, and 16101 of the Corporations Code, before arranging for home care services provided by an affiliated home care aide to a client in the state, the home care organization shall have an office in California and shall comply with both of the following:

(1) Register with the Secretary of State to conduct intrastate business in California.

(2) Maintain all pertinent records of the operation in California at the California office. All records shall be available to review, copy, audit, and inspect by the licensing agency.

1796.38. The department may issue a home care organization license to an individual or other entity that satisfies all of the requirements set forth in this chapter, including all of the following:

(a) Files a home care organization application, including the fees required pursuant to Section 1796.49.

(b) Submits proof of general and professional liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate.

(c) Submits proof of a valid workers' compensation policy covering its affiliated home care aides. The proof shall consist of

the policy number, the effective and expiration dates of the policy, and the name and address of the policy carrier.

(d) Provides the department, upon request, with a complete list of its affiliated home care aides, and proof that each satisfies the requirements of Section 1796.43.

(e) The owner or owners of the home care organization pass a background examination, as required pursuant to Section 1796.34.

(f) The applicant does not have any outstanding fees or civil penalties due to the department.

1796.39. (a) A home care organization licensee shall renew the home care organization license every two years.

(b) Renewal shall be conditioned upon the licensee doing both of the following:

(1) Submitting a complete home care organization licensee renewal application form and payment of fees, both of which shall be postmarked on or before the expiration of the license.

(2) Continuing to satisfy the requirements set forth in this chapter, and cooperating with the department in the completion of the home care organization licenses renewal process.

(c) Failure of the home care organization licensee to cooperate may result in the withdrawal of the home care organization license renewal application. “Failure to cooperate” means that the information described in this chapter and in any rules and regulations promulgated under this chapter has not been provided, or not provided in the form requested by the department, or both.

#### Article 7. Home Care Organization Operating Requirements

1796.41. A home care organization licensee shall do all of the following:

(a) Post its license and business hours in its place of business in a conspicuous location, visible both to clients and affiliated home care aides.

(b) Maintain and abide by a valid workers’ compensation policy covering its affiliated home care aides.

(c) Maintain and abide by an employee dishonesty bond, including third-party coverage, with a minimum limit of ten thousand dollars (\$10,000).

(d) Report any suspected or known adult abuse as required by Section 15630 of the Welfare and Institutions Code and suspected

or known child abuse as required by Sections 11164 to 11174.3, inclusive, of the Penal Code. A copy of each suspected abuse report shall be maintained and available for review by the department during normal business hours.

1796.42. (a) Home care organizations that employ affiliated home care aides shall ensure the affiliated home care aides are cleared on the home care aide registry before placing the individual in direct contact with clients. In addition, the home care organization shall do all of the following:

(1) Ensure any staff person, volunteer, or employee of a home care organization who has contact with clients, prospective clients, or confidential client information that may pose a risk to the clients' health and safety has met the requirements of Section 1796.23 before being hired.

(2) Require home care aides to demonstrate that they are free of active tuberculosis disease, pursuant to Section 1796.45.

(3) Immediately notify the department when the home care organization no longer employs an individual as an affiliated home care aide.

(b) This section shall not prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

#### Article 8. Affiliated Home Care Aides

1796.44. (a) A home care organization licensee shall ensure that prior to providing home care services, an affiliated home care aide shall complete the training requirements specified in this section.

(b) An affiliated home care aide shall complete a minimum of five hours of entry-level training prior to presence with a client, as follows:

(1) Two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment.

(2) Three hours of safety training, including basic safety precautions, emergency procedures, and infection control.

(c) In addition to the requirements in subdivision (b), an affiliated home care aide shall complete a minimum of five hours of annual training. The annual training shall relate to core

competencies and be population specific, which shall include, but not be limited to, the following areas:

- (1) Clients' rights and safety.
- (2) How to provide for and respond to a client's daily living needs.
- (3) How to report, prevent, and detect abuse and neglect.
- (4) How to assist a client with personal hygiene and other home care services.
- (5) If transportation services are provided, how to safely transport a client.

(d) The entry-level training and annual training on department-approved job-related topics described in subdivisions (b) and (c) may be completed through an online training program.

1796.45. (a) An individual hired to be an affiliated home care aide on or after January 1, 2015, shall be submitted to an examination 90 days prior to employment or within seven days after employment to determine that the individual is free of active tuberculosis disease.

(b) For purposes of this section, "examination" means a test for tuberculosis infection that is recommended by the federal Centers for Disease Control and Prevention (CDC) and that is licensed by the federal Food and Drug Administration (FDA) and, if that test is positive, an X-ray of the lungs. The aide shall not work as an affiliated home care aide unless he or she obtains documentation from a licensed medical professional that there is no risk of spreading the disease.

(c) An affiliated home care aide whose employment with a home care organization began before January 1, 2015, shall submit to the examination described in subdivision (a) before July 1, 2015.

(d) After submitting to an examination, an affiliated home care aide whose test for tuberculosis infection is negative shall be required to undergo an examination at least once every two years. Once an affiliated home care aide has a documented positive test for tuberculosis infection that has been followed by an X-ray, the examination is no longer required.

(e) After the examination, an affiliated home care aide shall submit, and the home care organization shall keep on file, a certificate from the examining practitioner showing that the affiliated home care aide was examined and found free from active tuberculosis disease.

(f) The examination is a condition of initial and continuing employment with the home care organization. The affiliated home care aide shall pay the cost of the examination.

(g) An affiliated home care aide who transfers employment from one home care organization to another shall be deemed to meet the requirements of subdivision (a) or (c) if the affiliated home care aide can produce a certificate showing that he or she submitted to the examination within the past two years and was found to be free of active tuberculosis disease, or if it is verified by the home care organization previously employing him or her that it has a certificate on file that contains that showing.

#### Article 9. Revenues

1796.47. (a) (1) Administration of this program shall be fully supported by fees and not civil penalties. Initial costs to implement this chapter may be provided through a General Fund loan that is to be repaid in accordance with a schedule provided by the Department of Finance. The department shall assess fees for home care organization licensure, and home care aide registration related to activities authorized by this chapter. The department may adjust fees as necessary to fully support the administration of this chapter. Except for General Fund moneys that are otherwise transferred or appropriated for the initial costs of administering this chapter, or penalties collected pursuant to this chapter that are appropriated by the Legislature for the purposes of this chapter, no General Fund moneys shall be used for any purpose under this chapter.

(2) A portion of moneys collected in the administration of this chapter, as designated by the department, may be used for community outreach consistent with this chapter.

(b) The Home Care Fund is hereby created within the State Treasury for the purpose of this chapter. All licensure and registration fees authorized by this chapter shall be deposited into the Home Care Fund. Moneys in this fund shall, upon appropriation by the Legislature, be made available to the department for purposes of administering this chapter.

1796.48. (a) The department may charge an application and renewal fee to become a registered home care aide and to renew a registered home care aide's registration.

(b) The maximum fee shall not exceed the total actual costs, which include, but are not limited to, of all of the following:

(1) The searches for criminal offender records performed by the Department of Justice. The cost to check the criminal offender records shall not subsidize the cost to check the criminal history of other persons by the department who are not charged a fee by the Department of Justice.

(2) The cost incurred by the Department of Justice for the searches of the records of the Federal Bureau of Investigation.

(3) The cost to the department to process the applications and maintain the home care aide registry and perform the duties required by this chapter and any rules and regulations promulgated under this chapter.

(c) The fees collected shall be deposited into the Home Care Fund pursuant to subdivision (b) of Section 1796.47.

1796.49. (a) A home care organization licensee shall pay the following fees:

(1) A 24-month initial license fee, as prescribed by the department, for a new home care organization licensee not currently licensed to provide home care services in the state.

(2) Two-year renewal fee, as determined by the department, based on the number of full-time equivalents (FTEs), including paid personnel or contractors needed to oversee the enforcement of this chapter.

(3) Other reasonable fees as prescribed by the department necessary for the administration of this chapter.

(b) The fees collected shall be deposited into the Home Care Fund pursuant to subdivision (b) of Section 1796.47.

#### Article 10. Complaints, Inspections, and Investigations

1796.51. In order to carry out the provisions of this chapter, the department may establish procedures for the receipt, investigation, and resolution of complaints against home care organizations.

1796.52. (a) The department may review and, if it determines necessary, investigate complaints filed against home care organizations regarding violations of this chapter or any rules or regulations promulgated under this chapter.



(b) The department shall verify through random, unannounced inspections that a home care organization meets the requirements of this chapter and the rules and regulations promulgated under this chapter.

(c) An investigation or inspection conducted by the department pursuant to this chapter may include, but is not limited to, inspection of the books, records, or premises of a home care organization. A home care organization's refusal to make records, books, or premises available shall constitute cause for the revocation of the home care organization's license.

(d) Other than maintaining the home care registry, the department shall have no oversight responsibility regarding registered home care aides.

1796.53. A duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter a home care organization during posted business hours, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter or any provision promulgated under this chapter.

#### Article 11. Enforcement

1796.55. (a) A home care organization that operates in violation of any requirement or obligation imposed by this chapter or any rule or regulation promulgated under this chapter may be subject to the fines levied or licensure action taken by the department as specified in this chapter.

(b) When the department determines that a home care organization is in violation of this chapter or any rules or regulations promulgated under this chapter, a notice of violation shall be served upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation and the statutory provision, rule, or regulation alleged to have been violated. The notice shall inform the licensee of any action the department may take under this chapter, including the requirement of a plan of correction, assessment of a penalty, or action to suspend, revoke, or deny renewal of the license. The director or his or her designee shall also inform the licensee of rights to a hearing under this chapter.

(c) The department may impose a fine of up to nine hundred dollars (\$900) per violation per day commencing on the date the violation was identified and ending on the date each violation is corrected, or action is taken to suspend, revoke, or deny renewal of the license, whichever comes first.

(d) The department shall adopt regulations establishing procedures for notices, correction plans, appeals, and hearings.

1796.56. Any fines and penalties collected pursuant to this chapter shall be deposited into the Home Care Penalties Subaccount, which is hereby created within the Home Care Fund created pursuant to Section 1796.47. Moneys in this account shall, upon appropriation by the Legislature, be made available to the department for purposes of enforcing this chapter.

1796.57. It is a misdemeanor for a person to falsely represent or present himself or herself as a home care aide applicant or registered home care aide.

1796.58. Any person who violates this chapter, or who willfully or repeated violates a rule or regulation promulgated under this chapter, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in a county jail for a period not to exceed 180 days, or by both that fine and imprisonment.

1796.59. (a) Notwithstanding any other provision of this chapter, the district attorney of every county, and city attorneys in cities that have city attorneys who have jurisdiction to prosecute misdemeanors pursuant to Section 72193 of the Government Code, may, upon their own initiative or upon application by the department or its authorized representative, institute and conduct the prosecution of any action for violation within their county of this chapter or a rule or regulation promulgated under this chapter.

(b) The civil, criminal, and administrative remedies available to the department pursuant to this chapter are not exclusive, and may be sought and employed in any combination as determined by the department to enforce this chapter or a rule or regulation promulgated under this chapter.

## Article 12. Operation

1796.61. This chapter shall become operative on January 1, 2015.

1796.62. This chapter and any rules and regulations promulgated pursuant to this chapter shall only be implemented to the extent that funds are made available through an appropriation in the annual Budget Act.

1796.63. The department shall adopt, amend, or repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, any reasonable rules, regulations, and standards as may be necessary or proper to carry out the purpose and intent of this chapter and to enable the department to exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with any of the provisions of any statute of this state. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this chapter through written directives, without taking regulatory action, subject to the limitations provided in subdivision (b).

(a) The department shall post any proposed rules promulgated under this section on its public Internet Web site no earlier than 10 calendar days prior to the effective date of the proposed rule, which shall also include notification to the public regarding how members of the public may comment, including the date on which those comment must be received in order to be considered by the department.

(b) The department's authority to implement and administer this section through written directives shall expire no later than 12 months after the written directives are promulgated and posted on a public Internet Web site, or upon the effective date of regulations promulgated in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), whichever occurs sooner.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

the meaning of Section 6 of Article XIII B of the California Constitution.







Approved \_\_\_\_\_, 2013

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*Governor*